CIVILIANS DURING MILITARY OPERATIONS

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"NOW WE ARE MOVING TOWARD THE CIVILIANIZATION OF WAR"

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Former ASD/ISA

Mr. Neal Koch

CIVILIANS DURING MILITARY OPERATIONS

- Law of Armed Conflict Distinctions
- Combatants
- OEF/ONE
- Those other guys
- US DoD Civilian Employees
- Civilian Contractor employees
- Media & War Correspondents

CIVILIANS DURING MILITARY OPERATIONS

- Civilians in Occupied Areas
- International Refugees
- Internally Displaced Persons
- NGOs
- UN “Experts on Mission”
  - Convention on the Safety of UN and Associated Personnel
- Detained Persons

REFERENCES

- Geneva Conventions of 1948 and Additional Protocols of 1977
- DoD Instruction 1000.1, Geneva Conventions ID Cards
- DoD Directive 1404.10, E-E DoD Citizen Civilian Employees
- DoD Instruction 3020.37, Continuation of Essential DoD Contractor Services during Crisis
- DoD Directive 5100.69, Political Asylum and Temporary Refuge
- Joint Publication 3-08, Program for POWs and Other Detainees
- Joint Publication 3-11, Joint Doctrine for NBC Defense
- Joint Publication 3-61, Public Affairs in Joint Operations
- Joint Publication 4-0, Logistic Support of Joint Operations

REFERENCES

- **AFI(I) 31-304, EPWs, Retained Personnel, Civilian Internees, etc.**
- **AFI 36-801, Uniforms for Civilian Employees**
- **AFI(I) 36-3026, ID Cards for Members of the Armed Forces, etc.**
- **SAF Interim Policy Memorandum -- Contractors in the Theater, 8 February 2001**
- **Memo, USAF/DP, 24 March 97, Deployment of AF Civilians**
- **Message, USAF/DPXC, 081324 May 97, Deploying AF Civilians**

APPLICATION OF LOAC

- Common Article 2 Conflicts
  - International armed conflict
  - Declared war unnecessary
- Geneva Protocol I View
  - Includes “wars of national liberation”
- Geneva Protocol II View:
  - Internal armed conflict (civil wars)
  - Not applicable “to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts”

U.S. POLICY ON LOAC

"The Armed Forces of the United States will comply with the law of war during all armed conflicts, however such conflicts are characterized, and, unless otherwise directed by competent authorities, the US Armed Forces will comply with the principles and spirit of the law of war during all other operations." CJCSI 5810.01B

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Distinction Between Combatants & Noncombatants

- Combatants are “those persons who have the right under international law to participate directly in armed conflict during hostilities”
- Members of the armed forces of a party to a conflict are combatants. Includes integrated militia, reservists, and voluntary corps.

Members of an Armed Force

- **GC III, Art 4:**
  - **Being commanded by a person responsible for his or her subordinates;**
  - **Having a fixed distinctive sign recognizable at a distance;**
  - **Carrying arms openly; and**
  - **Conducting operations in accordance with the laws and customs of war**

Ready • Reliable • Relevant

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The Air National Guard

NOW MORE THAN EVER

Members of an Armed Force

- **Additional Protocol I, Art 43 (1) amended the armed forces definition:**
  - The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates...
  - Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

Members of an Armed Force

- GP I, Article 44(3) relaxes the requirements of GC III, Art 4:
  - Allows a belligerent to attain combatant status by merely carrying his arms openly during each military engagement
  - Drops requirement for wearing a distinctive emblem
  - US position

Members of an Armed Force

- POWs Upon Capture (GC III Protections)
- Combatant Immunity
- Violations of Law of Armed Conflict can Result in Prosecution
  - UCMJ
  - Military Tribunals
  - Local Courts (Foreign and Domestic)
  - ICC

OPERATION NOBLE EAGLE

- **NORAD**
  - **Mission: maintain air sovereignty in defense of North America**
  - **Prosecuting the GWOT**
  - **Operate under ROE**
  - **Comply with LOAC**
  - **Participants are combatants**

CLEAR SKIES

- **Multilayered air defense system**
  - **Fighters**
  - **Federal law enforcement—Customs, Secret Service**
  - **ADA**

CLEAR SKIES

- **Customs:**
  - **Mission: Federal air police force**
- **Secret Service:**
  - **Mission: protecting the lives of their protectees**

CLEAR SKIES

- **Customs/Secret Service:**
  - **Noncombatants**
  - **Enforcing domestic criminal laws**
  - **Operate under RUF, not ROE**

CLEAR SKIES LEGAL RAMIFICATIONS

- **Terrorist Attack**
  - **Military action valid under national defense**
  - **Federal law enforcement action valid under domestic law**
- **Military Attack**
  - **NORAD/ADA no problem**
  - **Will federal law enforcement stand down?**
  - **If not, are they unlawful combatants committing war crimes?**
- **What about a mixed attack?**

Another Federal Age

- 17 September 01 Presidential Memorandum of Notification (MON)
- Approved CIA Worldwide Attack Matrix
- Authorized CIA paramilitary teams to work with military special forces

So what are paramilitary?

- Not lawful combatants under LOAC
  - Lack the 4 requirements

Definition of Paramilitary

- "Existing where there are *no military services* or existing alongside the military services and *professedly nonmilitary* but formed on an underlying military pattern as a potential auxiliary or diversionary military organization."
  - Emphasis added

Are they Spies?

- **Those who act clandestinely or on false pretenses to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the enemy.**
- **Soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army to obtain information, are not spies. Nor are soldiers and civilians, carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own army or for the enemy's army.**

How about Mercenaries?

- Article 47, Additional Protocol I (1977)
- Very specific definition:
  - Specially recruited to fight in an armed conflict
  - Does, in fact, take a direct part in the hostilities
  - Motivated essentially by desire for private gain and is promised excessive material compensation
  - Neither a national nor a resident of a Party to the conflict
  - Not a member of a Party's armed forces
  - Not been sent by a State which is not a Party on official duty as a member of its armed forces

Noncombatants Generally Synonymous With Civilians…Except For:

- ***Hors de Combat***
  - – POWs, Wounded, Shipwrecked, Sick
- **Medical Personnel**
- **Chaplains (not chaplain personnel)**
- **Persons who accompany the armed forces without actually being members thereof**

Persons Who Accompany the Armed Forces …

- DoD Civilian Government Employees
  - Civilian members of military aircraft crews
- Supply Contractors (i.e., Dyncorp, B & R)
- Technical Representatives of Government Contractors
- War correspondents

Persons Who Accompany the Armed Forces …

- **Must have identity cards issued by proper government**
- **POWs upon capture**
- **Not allowed to participate directly in armed conflict during hostilities**

HOSTILITIES

- "Active part in the hostilities"
  - GC III, Art 3.
- "Participate directly in hostilities"
  - AP I, Art 43 (2).
- "Takes part in hostilities"
  - AP I, Art 45 (1)
- "Take a direct part in hostilities"
  - AP I, Art 51 (3)

Hostilities

- **“Direct” participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces.**
- **Participation “implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place.”**
- **Hostile acts should be understood to be acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces.**

Examples

- **Lookouts or guards**
  - **Naval Commander's handbook; AMC R 690-11**
- **A member of a weapon crew, or …a crewman on a military aircraft in combat.**
  - **AFP 110-34 (now obsolete)**
- **The gathering of intelligence, as well as logistical support for combatant forces, or acts of violence.**
  - **Hays Parks**

Examples (Cont'd)

- **Activities directly involved in the delivery of violence and protecting personnel, infrastructure and materiel.**
  - **Australian Defense Force**
- **The use of a weapons-system in an indispensable function.**
  - **Knut Ibsen, Handbook of Humanitarian Law in Armed Conflict**

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Civilian Symposium

- **LOAC Working Group**
  - **Direct Participation = “any or integral portion of an act that may result in actual harm to the personnel or equipment of the enemy”**
    - **Loading Weapons**
    - **Providing level one maintenance**
    - **Terminal attack control (laser designator)**
    - **Tactical ISR**

DOD CIVILIAN EMPLOYEES

- **GC Status: “persons who accompany…” and POWs upon capture**
- **Emergency-essential (E-E): deploy with forces for combat operations/crisis situations**
- **[NATO] SOFA status: “civilian component” accompanying a force of a Contracting Party and in the employ of an armed force of that Party - but some employees excluded**

DOD CIVILIAN EMPLOYEES

- **ID Card: DD Form 489**
- **Wear military uniforms with special patches**
- **Bear arms only for self-defense and cannot participate in offensive actions**
- **Force protection Issues**

PHILLIPS
DAFCIVLIAN

19

DOD CIVILIAN EMPLOYEES

- **Chemical Protection Suits: May be provided consistent with supply availability and their risk of exposure**
- **Criminal jurisdiction:**
  - **UCMJ: declared war only**
  - **Military Commission or Military Tribunal - rare**
  - **U.S. Federal jurisdiction - impact of Military Extraterritorial Jurisdiction Act of 2000**

CIVILIAN CONTRACTOR EMPLOYEES

- Three types
  - **Systems Contractors: support specific systems throughout their system's lifecycle across the range of military operations.**
  - **External Support Contractors: work under contracts awarded by contracting officers serving under the command and procurement authority of supporting headquarters outside the theater (LOGCAP)**
  - **Theater Support Contractors: usually from the local vendor base, provide goods, services, and minor construction**

RQ-4A

GLOBAL HAWK

CIVILIAN CONTRACTOR EMPLOYEES

- GC Status: “persons who accompany…” and POWs upon capture
- [NATO] SOFA status: None, unless specifically addressed in the SOFA or a supplement
  - Of 106 SOFAs, only 5 with provisions
  - None include them in “civilian component”
- ID Card: DD Form 489
- Generally not to be issued weapons except for self-defense in very limited situations

CIVILIAN CONTRACTOR EMPLOYEES

- **Will not wear military uniforms except for compelling reasons**
  - **Brown & Root prohibits “military garb”**
  - **CINC-level determination**
  - **Balkans policy**
- **If wear uniform, must be distinctive**

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MILITARY POLICE
IFOR

CIVILIAN CONTRACTOR EMPLOYEES

AIR FORCE POLICY:

- The Air Force should never contract out or assign to civilian employees the authority to use military force
- Air Force commanders should not issue standard military uniform items to contractor personnel - if they do, must have distinctively colored items

CIVILIAN CONTRACTOR EMPLOYEES

- **Chemical Protection Suits--unclear. Contract terms may govern. If silent, policy on DOD civilian employees may apply**
- **Force Protection Issues**

CIVILIAN CONTRACTOR EMPLOYEES

- **Military commanders have no command authority over contractors and cannot order them to do anything (but may take action to remove them from duties or area)**
- **May not order them to stay on job or in area**
  - **Desert Storm food contractors**
- **Very limited criminal or admin jurisdiction over them**
- **MEJA**

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Additional Protocol I Issue

- GP I, Art 58

  (a) Remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives

  (b) Take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations

WAR CORRESPONDENTS vs JOURNALISTS

- **“War correspondents” are full-time newspaper or other media reporters in uniform, carrying ID cards indicating their status and attached to the armed forces. [e.g., Stars and Stripes]**
- **UCMJ Jurisdiction**
- **Full support & SOFA coverage**

MEDIA REPRESENTATIVES

- **GP I, Article 79: "Journalists engaged in dangerous professional missions in areas of armed conflict" who are "considered as civilians"**
  - **Must have an ID card issued by proper government**
- **Journalists in a combat zone will be credentialed by US military and will be required to a**
  military security ground rules
- **Not generally addressed by SOFA**
  - **tourists**
- **No support required**
  - **Chemical protection**
    - **no authority**

OTHER CIVILIANS ON THE BATTLEFIELD

CIVILIANS IN OCCUPIED AREAS

- Geneva Civilian Convention (GC IV or GC)
- GC IV addresses (temporary) occupation incident to a conflict and invasion, not a "Military Occupation"
- Occupying Power may have duty to provide food and medical supplies
- Occupying Power may have duty to provide medical care and health and hygiene measures
- Occupying Power has responsibilities to protect private property and prevent war crimes

POLITICAL ASYLUM AND TEMPORARY REFUGE

- **Only the State Department has authority to grant political asylum - military authorities can only direct the person to contact US embassy or consulate**
- **Military commander can provide temporary refuge if requested**
  - **Limited circumstances**
  - **Must notify AFOSI, protect the foreign national, and IMMEDIATELY contact the Air Force Operations Support Center in Pentagon**

INTERNATIONAL REFUGEES

- **Primary responsibility lies with UN High Commissioner for Refugees and US Department of State**
- **Primary international law is the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol I**
- **Universal Declaration of Human Rights (1948) recognizes right to emigrate from native country, but does not create a right to immigrate into another country**

INTERNALLY DISPLACED PERSONS

- **Those who have been forced to flee their homes as a result of internal strife, conflict, or natural disaster, but did not flee their country**
- **Currently no treaties that address such refugees**

NGOs

- Generally do not have a clear status under international law
  - ICRC and some religious organizations, relief societies, and some POW assistance organizations have certain rights under Geneva POW Convention
- Generally no status under SOFAs - are generally tourists

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NGO CONNECTION TO JOINT OPERATIONS

- **Activities and capabilities must be factored into commander's assessment and mission**
- **Professionalism, capability, equipment and other resources, and expertise vary greatly**
- **Valuable sources of info, but some may avoid close affiliation with military forces**
  - **Are we making them spies?**
- **Climate of cooperation among NGOs and military should be a goal but be aware of fiscal constraints**

UN "EXPERTS ON MISSION"

1946 Convention on the Privileges and Immunities of the United Nations

- **Freedom from arrest, detention, and prosecution**
- **Required to be immediately released**
- **Reality = Bosnia**

1994 CONVENTION ON THE SAFETY OF UN AND ASSOCIATED PERSONNEL

- Entered into force on 15 January 1999
- Broad definitions of UN and associated personnel and UN operations
  - Includes associated military contingents, NGOs, contractors, and others
- Applies to all cases outside of Chapter VII enforcement actions in which UN forces are engaged as combatants against organized armed forces and to which LOAC applies

1994 CONVENTION ON THE SAFETY OF UN AND ASSOCIATED PERSONNEL

- **Main goal: provide for universal criminal jurisdiction for those committing serious offenses against UN personnel (kidnapping or other attacks)**
- **Upon capture, UN personnel are not to be interrogated and are to be promptly released**
- **Pending release, to be treated consistently with principles of Geneva Convention on POWs**
- **UN and associated personnel always retain**

DETAINED PERSONS

- If suspected of taking part in hostilities, entitled to competent tribunal to determine status
  - GC III, Art 5; AR 190-8, para 1-6b
- Presumption of POW status
  - GC III, Art 5; AP I, Art 45; AR 190-8, para 1-6a
- If not a lawful combatant, may be tried for crimes at same tribunal or separate one
  - GC III, Art 5; AP I, Art 45;

DETAINED PERSONS

- Possible Determinations
  - Enemy POW
  - Retained Person (Medical, Chaplain, Aid Society)
  - Innocent Civilian
  - Civilian Internee detained for possible criminal action

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QUESTIONS?